HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

W.P.No.27484 of 2005

Dated 29th Day of August, 2007

Between:

Lekkala Mangamma .. Petitioner

And

The Andhra Bank,
Rep. by its Branch Manager,
Chodavaram Branch, Chodavaram,
Visakhapatnam District
and another ..
Respondents

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O R D E R:

This writ petition is filed seeking a mandamus to declare the action of the 1st respondent-Andhra Bank in refusing to release the petitioner's gold ornaments pledged against Loan Account Nos.GL/AGL/2004-0353 and GL/AGL/2004-0472, as arbitrary and illegal.

The petitioner claims to be an agriculturist and had taken two agricultural loans from the 1st respondent-bank in the year 2004. The first loan was for an amount of Rs.7,000/- under Loan Account No.GL/AGL/04-0353 against pledging of one black beads (ornamental gold) weighting 1½ tula and a gold chain weighing one tula. The second loan was for Rs.10,000/- under Loan Account No.GL/AGL/2004-0472 against pledging of two gold chains weighing one tula each and five gold rings weighing about 1½ tulas. The petitioner's case is that though she repaid two loans on 12.10.2004 along with interest and obtained credit advice acknowledgement from the respondents, the 1st respondent has not released the pledged ornaments. The petitioner got a legal notice issued to the 1st respondent on 29.11.2004 wherein he was called upon to release the pledged ornaments. The 1st respondent got issued a reply notice claiming banker's lien in view the failure of repayment of loans by certain borrowers to whom the petitioner stood as guarantor/co-obligant. The petitioner admitted that she stood as a guarantor in

respect of the following seven loans:

1. Loan Account No.PAGCC 2070 for an amount of Rs.20,000/- given to S.S.R.V.S.P.Naidu
2. Loan A/c.No.PAGCC No.3070 given to Bibbili Ramnadham
3. Loan A/c.No.PAGCC 3071 given to B.Narayana Murthy
4. Loan A/c No.PAGCC 2162 given to M.Gurramma
5. Loan A/c No.RTO 2004002 given to SSVS Pardesi Naidu
6. Loan A/c No.PAGCC 90000027 given to L.Ramu
7. Loan A/c No.PAGCC 2069 given to L.Kondamma

She averred that as a matter of fact, none of these aforementioned loans have become overdue and one of the loans with Loan Account No.PAGCC 2162 was cleared.

Sri K.Govindaraju, Branch Manager of Andhra Bank, Chodavaram, has filed counter affidavit stating that the petitioner was a co-obligant for the aforementioned seven loans and out of those loans, Loan Account No.APGCC 2162 was closed on 5.5.2005 and the remaining loans are still outstanding. It is further stated that none of the borrowers under the said loan accounts repaid the loans in spite of service of notices on them. It is further averred that in view of the undertaking given by the petitioner, her gold ornaments could not be returned as the bank exercised lien on the ornaments and the petitioner agreed with the bank to exercise such a lien in the loan application filed by her.

Heard Sri A.Venkata Ramana, learned counsel for the petitioner and Dr.K.Laxminarasimha, learned standing counsel for Andhra Bank.

The learned counsel for the petitioner has reiterated the averments contained in the affidavit filed in support of the writ petition. While referring to a copy of the loan application enclosed to the counter affidavit of the respondents (though a counter is not filed by the respondents, the learned counsel has passed on a copy of the same to the Court during the course of hearing) he submitted that the petitioner subscribed her signature only by acknowledging that the particulars

mentioned in the application are true and correct to the best of her knowledge and the description, fitness and value of the gold in respect of the ornaments pledged are in order and that she concurred with the certificate of appraisal. The learned counsel has further submitted that though the first page of the loan application contains as many as nine conditions which included condition Nos.7 and 8 under which it was mentioned that the borrower agreed for the bank holding or retaining the ornaments as security for any other existing or future liability or liabilities payable by her to the bank as a borrower or a co-obligant or a guarantor, Page No.2 of the form in which the petitioner signed does not indicate that she agreed to those conditions contained on page 1 of the application.

Though this contention of the learned counsel for the petitioner appears to be attractive at the first blush, I am unable to accept it. The application made by the petitioner contains several columns mentioned on two pages. There is only one place at which the provision for signature of the applicant is made i.e. at page No.2. It is no doubt true that in the box in which a provision for the applicant's signature is made contains the aforementioned two recitals, namely, the correctness of the particulars mentioned in the application and the description, etc. of the gold ornaments. The very fact that the petitioner applied in the form, which contains the conditions relating to her agreeing with the bank to retain the ornaments in connection with her liability as a co-obligant or a guarantor does not permit the petitioner to disown the conditions contained at Page No.1. The context in which the petitioner's loan was sanctioned warrants the reading of the application as a whole and not in the compartmental manner in which the learned counsel for the petitioner requests the Court to read and interpret the contents of the form. Moreover, the banker's lien is a well-recognized phenomenon in the filed of banking business and no

exception could be taken against the action of the respondents in enforcing such a lien, more so, in a case where the application signed by the petitioner contains specific conditions.

For the aforementioned reasons, the writ petition fails and is accordingly dismissed. It is however, made clear that as and when the six loans in respect of which the petitioner stood as co-obligant/guarantor are cleared, the petitioner is entitled to the return of the gold jewelry if the respondents have not enforced their right to sell the gold ornaments towards recovery of outstanding loan amounts. No costs.

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29.08.2007

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Note: During the course of arguments when it is pointed out that the Andhra Bank is not made a party, the learned counsel for the petitioner corrected the cause title with the permission of the Court.